IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5249 OF 2005

M/s.Metal Reclying Ind. .. Petitioner.
V/s.
Union of India through
Central Govt. Advocates .. Respondents.

Mr.S.N. kantawala with Mr.Yogesh Rohira for the petitioner.
Mr.S.S. Pakale with Mr.Anurag Gokhale for the respondents.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 17TH AUGUST, 2005.

P.C. :

1. Heard rival parties.

2. Rule. Rule returnable forthwith. Heard finally by consent of the parties.

3. This petition is directed against the order passed by the Settlement Commission dated July 22, 2005 remitting the proceedings back to the Commissioner of Central Excise & Customs, Surat-I for decision in terms of sub-section (1) of Section 32 L of the Central Excise Act, 1944 read with sub section (1) of Section 127-I of the Customs Act, 1962 with direction to dispose it in accordance with the provisions of the aforesaid Acts as if no application under section 32 E of the Central Excise Act or

section 127 B of the Customs Act had been made.

4. Having heard both the parties, we are of the considered view that non engagement of counsel resulting in three adjournments alone was not sufficient to reach to the conclusion that the applicant was non co-operative. The view taken on the slender ground mentioned is unsustainable. Even otherwise, considering the consensus between the parties and in the interest of justice, we set aside the impugned order subject to payment of cost of Rs.15,000/- to be deposited with the Settlement Commission for being paid to the revenue within one week from today.

5. The proceedings are remitted back to the Settlement Commission for decision in accordance with law.

6. The learned counsel for the petitioner undertakes to appear before the Settlement Commission on September 9, 2005 with counsel.

7. It is made clear that the petitioner shall not seek any further adjournment before the Settlement Commission and shall co-operate with the Commission. In the event, the Commission finds it difficult to proceed with hearing on the date fixed,

the Commission shall be at liberty to fix any other date as may be suitable to it.

8. We expect the Commission to dispose of the remitted proceedings as expeditiously as possible at any rate preferably within three months from the date of receipt of the copy of this order.

9. The writ petition is disposed of in terms of this order with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)